

This action arises as a result of the Defendants attempt to execute an alleged

warrant authorizing the arrest of Ms. Coloyan's son, Allan. At the time of that attempt, Allan had moved out of Ms. Coloyan's house and was working on a fishing boat in Alaska.

When the Defendants arrived at her home, Ms. Colyan informed them of Allan's whereabouts. Ms. Coloyan asked to see the warrant that the Defendants claimed authorized their entry into her home. However, the Defendants muscled their way passed her and through the front door of her home, and Badua responded to that inquiry by pointing to his badge and said that his badge gave him all the authority he needed to enter and search her home.

The defenses raised by the Defendants are first, they had reason to believe that Allan Coloyan was at 91-1082 Kapaahulani Street, Ewa Beach Hawaii 96706, and second, that Ms. Coloyan consented to their entry into her home. The information that the Defendants relied upon regarding Allan's residence is stale, and Ms. Coloyan did not consent to the Defendants' entry into her home to search for Allan.

While they were at the Plaintiff's home, Badua informed Ms. Coloyan that the police spoke to her neighbors about her son's criminal activities. The only reason for Badua telling Ms. Coloyan that he talked to her neighbors is to inflict the maximum distress possible on her.

As a result of the Defendants' conduct, Ms. Coloyan suffered stress, anxieties, feelings of shame, ect, that in turned caused her severe headaches and significantly effected her preexisting problem with hypertension. This resulted in loss of work and required Ms. Coloyan to get additional medical help.

The actions of the Defendants, particularly Badua's actions, were intentional and malicious. Based upon the age of the information they had about the whereabouts of Allan Coloyan, they knew, or they should have known, that they had no reasonable opportunity of finding their quarry in Ms. Coloyan's home, and therefore, the alleged warrant for the arrest of Allan Colyan did not authorize their entry into Ms. Coloyan's home.

For Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe that the suspect is within. Payton v. New York, 445 U. S. 573, 603, 100 S. Ct. 1371, 1388, 63 L. Ed. 2d 639 (1980). Here, an arrest warrant was issued for Allan Coloyan.

In order for a search pursuant to an arrest warrant to be lawful, the police officer, who are executing that warrant, must have both reason to believe that the suspect resides at the premises to be searched and that he is in the place to be searched at the time. Perez v. Simmons, 884 F. 2d 1136 (9th Cir. 1989). If a police

officer has a reasonable belief that the suspect resides in the premises to be searched but does not have a reasonable belief that the suspect is in the premises, or vice versa, the search is unlawful. *id*

In the Ninth Circuit, a police officer, who conducts a search of the home of a third party based solely upon an arrest warrant, must have probable cause to believe both that the suspect resides in the home and he is there at the time the arrest is to be made. United States v. Gorman, 314 F. 3d 1105, 1110-1115 (9th Cir. 2002). Therefore, a police officer may lawfully conduct a search of a third party's home for the subject of an arrest warrant:

only if the investigating officers' knowledge and trustworthy information would cause a man of reasonable caution to believe that the suspect 'is in (that) particular building.

id 1113 citing Vasquez v. Snow 616 F. 2d 217, 220 (5th Cir. 1980) quoting United States v. Phillips, 497 F. 2d 1131, 1136 (9th Cir. 1974).

The facts establish that Badua and the other defendants did not have probable cause to believe that Allan Coloyan resided with Ms. Coloyan at the time of the search. While the arrest warrant had the Kapaahulani address on it, to the right of that address are the words "Could be,"

The words "could be" on the warrant and the fact that Badua ran an LRNS and an NCIC check to discover Mr. Coloyan's then current address. This implies

that there is that Badua did not believe the address on the warrant was trustworthy

The most recent information that Badua got for his efforts showed that Mr. Coloyan might reside or be found in a place other than Kapaahulani address. The information regarding the Kapaahulani address was more than two years old, and therefore, a person of reasonable caution would not believe that Mr. Coloyan was at the Kapaahulani address.

The Defendants presents no evidence that they had a reasonable belief that at the time of the search Allan Coloyan was at the Kapaahulani address. Therefore, the search conducted of Ms. Coloyan's home was unlawful.

the Defendants claim that Ms. Coloyan consented to the search of her home. Ms. Coloyan denies that she ever consented to having her home searched.

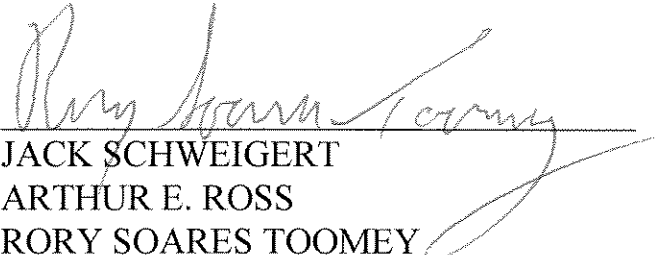
Because Ms. Coloyan did not physically resist the search is not evidence of her consent. Mere acquiescence to lawful authority is insufficient to constitute consent to a search. United States v. Spires, 3 F. 3d 11234, 1237 (9th Cir. 1993)

The evidence dose show that when Ms. Coloyan opened her door to Badua and Omai they ran into her house without her permission, When Ms. Coloyan asked if they did not need a search warrant, Badua pointed to his badge and replied this is all the authority I need.

A subject of a search does not consent to that search when her consent is

prompted by a show of official authority. *id.* and United States v. Edmondson, 791 F. 2d 1512 (11th Cir. 1986). Here, if Ms. Coloyan had consented to the search of her home, that consent would have been prompted by the defendants' show of official authority

DATED: Honolulu, Hawaii, March 2, 2006



JACK SCHWEIGERT
ARTHUR E. ROSS
RORY SOARES TOOMEY
Attorneys for Plaintiff
OFELIA COLOYAN

)

)

)

)

1

)

)

1

1

)

)

)

)


1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 104

1. $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$

[X] HAND DELIVERED

[] UNITED STATES MAIL, first class

Postage prepaid


JACK SCHWEIGERT
RORY SOARES TOOMEY
Attorneys for Plaintiff
OFELIA COLOYAN

JACK SCHWEIGERT

RORY SOARES TOOMEY

Attorneys for Plaintiff

OFELIA COLOYAN